

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2292 of 2000

with

CIVIL APPLICATION No 9004 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT HOUSING BOARD

Versus

KALYAN CONSTRUCTION CO.

Appearance:

MR YF MEHTA for Petitioner
MR RA SEJPAL for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. The appeal is admitted and upon joint request and considering the peculiar facts and circumstances, the matter is taken up for final hearing.

2. By this appeal under section 96 of the Code of Civil Procedure, the appellant original defendant has challenged the judgment and decree recorded by the Civil Court on 31st July, 2000 in Special Case No.138/85 whereby the respondent-original plaintiff, a partnership firm-contractor came to be awarded an amount of Rs.76,581-82 against the original suit claim of Rs.1,50,000/- by way of damages arising out of breach of contract, breakup of which is as follows, with interest at the rate of 12% p.a..

Rs.51,296/- being the amount calculated as interest
on the extra item work paid to
respondent-plaintiff.

Rs.15,522/- Interest on bank guarantee.

Rs.9812-63 Supervision charges.

3. The learned advocates appearing for the parties are heard and who supplied us the relevant and material documentary and oral evidence in course of submissions before us. In order to appreciate the merits and challenge against the appeal, a short spectrum of facts may be highlighted in the beginning.

4. The appellant is a body corporate established under the provisions of Gujarat Housing Board Act. A contract bearing No.B/1/14 came to be executed as per Format B-1 between the parties, the appellant-original defendant and respondent-original plaintiff who are hereinafter referred to as appellant and respondents for the sake of convenience and brevity. The contract was in respect of the construction of tenements near village Parsmia Nr. Bhavnagar city. On account of high rise and sudden upward fluctuation in the prices, the plaintiff alleged that it was entitled to appropriate rise in rate of prices mentioned in the contract. The date of contract is 20-8-1977. The final bill came to be prepared as per Ex.89 on 20-11-1984. The plaintiff, inter-alia alleged that the amount of Rs.1 lac forming part of the amount of Rs.5 lacs towards extra work done by the Contractor was paid very late and suffered loss of interest, and therefore, the claim of amount of Rs.51,296/- on that count for a period from 8-2-1979 to 20-11-1984. It also claimed an amount of

Rs.15,522/towards interest on bank guarantee irregularly and unauthorisedly encashed by the defendant. Since the plaintiff-firm had to pay for supervision charges, it claimed the same.

5. The defendant-Board appeared and resisted the suit by filing written statement, Ex.26, inter-alia, contending that the final bill was prepared and paid as per the contract and due and payable amount to the contractor. The claim made by the plaintiff, thus, was denied. It also raised various statutory objections like estoppel, bar of limitation etc..

6. Upon appreciation and examination of the evidence of the parties, the trial court partly decreed the suit as stated, hereinbefore, holding that the original plaintiff is entitled to interest on bank guarantee to the tune of Rs.15,522/- and supervision charges of Rs.9812-63 and an amount of Rs.51,296/- being the amount calculated as interest on the extra item work to the extent of Rs. 1 lac, which was paid late as per the final bill.

7. After having heard and considering the evidence relied upon by the parties, we are of the opinion that the trial court has committed error in decreeing an amount of Rs.9812-63 towards the supervision charges. We also find that the award of amount of Rs.15,522/- under the head of interest on bank guarantee, which was encashed by the original defendant is, also, not justified in the facts and circumstances of the case.

8. There is no dispute about the fact that the amount of Rs.1 lac being a part of the total amount of Rs.5 lacs claimed towards the extra work done by the contractor, the plaintiff-firm was paid in view of the final bill Ex.89 dated 20-11-1984. Thus, the due and payable amount of Rs.1 lac was paid late for a spell from 8-2-1979 to 20-11-1984. For a person like contractor such amount for such a long time withheld by the original defendant-Board without any justification must entail into reasonable amount of compensation in terms of interest. It was a contract of construction of quarters and obviously, therefore, it was a commercial dealing. The rate of interest awarded by the trial court under this head is only 12% p.a. and it is also simple interest. A person dealing with a commercial transaction is deprived of such a big amount of Rs.1 lac for a long spell is entitled to interest as damages. In fact, for a businessman or a contractor it is a matter of common understanding that such an amount which was withheld

without reasonable ground or explanation could have been put to productive or prudent use. Therefore, we have no hesitation in finding that the award of damages on late payment of the amount of Rs. 1 lac at the rate of 12% p.a. by the trial court is justified in the facts and circumstances of the case, and, therefore, we affirm the part of the decree under challenge to the extent of Rs.51,296/- rounded upto Rs.51,300/- with interest at the rate of 10% p.a. from the date of suit till payment. The learned advocate for the appellant- original defendant-Board has stated before us that the amount due and payable pursuant to this judgment shall be deposited within a period of four weeks from today and till then the execution proceedings shall stand stayed. The appeal shall stand partly modified and allowed. The parties are left to bear their own costs. Direct service is permitted.

9. There shall be no order on the civil application and the same is dismissed.

zgs/-